

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 WILLIE SMITH,

7 Plaintiff,

3:13-cv-00202-MMD-WGC

ORDER

8 v.

9 HOMES, et. al.,

10 Defendants.

11 Before the court is Plaintiff's Motion for Sanctions. (Doc. # 56.)¹ Defendants filed a
12 response. (Doc. # 60.) No reply was filed.

13 **I. BACKGROUND**

14 In this action, Plaintiff was allowed to proceed with a claim for retaliation against
15 defendants Southern Desert Correctional Center (SDCC) SDCC Caseworker Homes, SDCC
16 Associate Warden of Programs C. Burson, and SDCC Warden Brian E. Williams. (Pl.'s Am.
17 Compl., Doc. # 32; Screening Order, Doc. # 5.)² Plaintiff alleges that on April 21, 2011, he was
18 transferred to SDCC from High Desert State Prison (HDSP) after he was beaten and denied
19 medical treatment. (Doc. # 32 at 4.) On April 22, 2011, he asserts that he was taken to a review
20 hearing by defendant Homes to be released from solitary confinement; however, once defendant
21 Homes learned that an NDOC officer was being investigated for assaulting Plaintiff, Homes
22 refused to allow Plaintiff to be released into general population and he was held in solitary
23 confinement for three months as a form of punishment. (*Id.*) Plaintiff contends that he contacted
24 defendant Williams about the situation, to no avail. (*Id.* at 4-5.) He further avers that on June 13,
25 2011, he filed a grievance on the issue that was denied by defendant Burson, confirming
26

27 ¹ Refers to court's docket number.

28 ² To date, only defendants Homes and Williams have been served. Plaintiff has been given an additional
period of time to effectuate service on C. Burson. (*See* Doc. # 53.)

1 Williams' policy of violating inmates' civil rights. (*Id.* at 5.)

2 Defendants filed a motion to dismiss, arguing that Plaintiff previously litigated and
3 settled claims related to an alleged assault occurring at HDSP on March 24, 2011, in 3:12-cv-
4 00024-LRH-VPC, and the terms of the written settlement agreement included a release of all
5 claims provision that bars Plaintiff from asserting his claims in this action.

6 The court has issued a report and recommendation that the motion to dismiss be denied.
7 (Doc. # 57.)

8 Plaintiff filed the instant motion seeking to impose sanctions against Defendants under
9 Federal Rule of Civil Procedure 11, arguing that Defendants filed their motion to dismiss based
10 on false information. (Doc. # 56 at 2.) According to Plaintiff, Defendants' claim in the motion to
11 dismiss that Plaintiff previously litigated and agreed to settle all claims related to an alleged
12 assault that occurred in 2012 now bars his claims in this action is not true. (*Id.* at 2-3.) Plaintiff
13 requests that sanctions in the amount of \$200 be imposed upon Defendants and paid to Plaintiff.
14 (*Id.* at 4.)

15 Defendants argue that Plaintiff's motion should be denied because he failed to comply
16 with Rule 11's safe harbor provision by serving a copy of the motion on Defendants twenty-one
17 days before it was filed. (Doc. # 60 at 1-2.) They further assert that Plaintiff's dissatisfaction with
18 his prior settlement agreement is not grounds for imposing sanctions under Rule 11. (*Id.* at 3.)

19 **II. DISCUSSION**

20 Federal Rule of Civil Procedure 11 states that pleadings, motions or other papers will not
21 be presented to the court for an improper purpose and the contentions contained in such papers
22 will be supported by the law and factual contentions have evidentiary support. Fed. R. Civ. P.
23 11(b). If the rule is violated, the court may impose appropriate sanctions. Fed. R. Civ. P.
24 11(c)(1).

25 Defendants are correct that Rule 11 contains a safe harbor provision which requires a
26 motion for sanctions to be served twenty-one days before it is filed, to allow the asserted violator
27 to correct the impropriety. Fed. R. Civ. P. 11(c)(2). Plaintiff apparently did not serve the motion
28 on Defendants twenty-one days before filing it, in contravention of Rule 11(c)(2). This alone is a

1 basis to deny Plaintiff's motion.

2 In addition, while the court issued a report and recommendation denying the motion to
3 dismiss, the court does not find that the motion was presented for an improper purpose under
4 Rule 11(b). Instead, Defendants advanced an argument with their interpretation of a settlement
5 agreement previously entered into by Plaintiff, and Plaintiff was permitted to argue, as he did,
6 that the settlement agreement does not apply to bar the claims asserted in this action.

7 For these reasons, the court finds the imposition of sanctions under Rule 11 would be
8 improper. Therefore, Plaintiff's motion (Doc. # 56) is **DENIED**.

9 **IT IS SO ORDERED.**

10 DATED: July 7, 2014.

11
12 

13

WILLIAM G. COBB
14 UNITED STATES MAGISTRATE JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28